IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10500 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTABEN W/O BHAILALBHAI PATEL & 1 - Petitioner(s)
Versus
MAMLATDAR AND AGRICULTURE LANDTRIBUNAL (CEILING) & 2 - Respondent(s)

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Appearance :

MR BS PATEL for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3 - 2, 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5, 2.2.6, 2.2.7,2.2.8 MRS RANJAN B PATEL for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3 - 2, 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5, 2.2.6, 2.2.7,2.2.8
NOTICE SERVED BY DS for Respondent(s) : 1 – 3.

MR SATYAM CHHAYA, AGP for the State

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 01/02/2007

ORAL JUDGMENT

1. The short facts of the case are that two cases under Gujarat Agricultural Lands Ceiling Act (hereinafter referred to as “the Act”) were registered in connection with the lands held by one Bhailalbhai Ishwarbhai Patel and Zaverbhai Ishwarbhai Patel (hereinafter referred to “Bhailalbhai” or “Zaverbhai” as the case may be, since both have expired). There were earlier litigations and ultimately the matters were remanded to the Mamlatdar and the Mamlatdar vide order dated 11.5.1984 declared that Zaverbhai was holding excess land admeasuring 67acres and 27 gunthas, whereas Bhailalbhai was holding excess land admeasuring 70 aces and 22 gunthas. The matters were carried in appeal before the Assistant Collector and the appeal came to be dismissed as per the order dated 20.11.1984. The petitioners further carried the matter in revision before the Tribunal and the Tribunal as per the order dated 18.7.1996 has dismissed the revision and it is under these circumstances the present petition.

2. Heard Mr.Patel, learned Counsel for the

petitioners and Mr.Chhaya, learned AGP for the State Authorities.

3. Mr.Patel, learned Counsel appearing for the petitioners, raised the first contention that as per the evidence available on record, there was major son Ashok, who was born on 5.8.1958, even if the latter certificate is taken into consideration and, therefore, he submitted that if the age is counted on the basis of the birth on 5.3.1958, he was major and, therefore, one additional unit was required to be given for major son Ashok. Neither of the authorities has considered the said aspect for giving additional unit and, therefore, the orders passed by the lower authorities deserves to be quashed.

4. The perusal of the order passed by the Mamlatdar and its confirmation thereof by the Assistant Collector and the Tribunal shows that earlier in the deposition of the holder of the land, it was stated that there is no major son. Thereafter, the medical certificates were produced, in which the date mentioned was 5.3.1958 and in the certificate of Primary School, the date

mentioned was 12.8.1957 and, therefore, upon appreciation and reappreciation of evidence, it was found by the authority that there is no reliable material produced to show that Ashok Bhailalbhai was major and, therefore, one additional unit is denied to Bhailalbhai. Such a finding of fact based on the appreciation and reappreciation of evidence, cannot be upset by this Court if the statement on oath is relied upon by the authority as against the doubtful documents produced at the later stage. It deserves to be recorded that in the orders of the lower authorities, including Mamlatdar, it has been found that the signature of the person, who signed the document was not proved and the authenticity of the certificate itself was doubtful as against the statement made on oath that there was no major son to Bhailalbhai, the reliance is placed upon the statement made on oath. Therefore, such an aspect cannot be said as by committing jurisdictional error or the exercise of the discretion in a perverse manner, which may be interfered by this Court under

Article 227 of the Constitution of India. Therefore, the said contention raised on behalf of the petitioners by Mr.Patel fails.

5. Mr.Patel, learned Counsel appearing for the petitioners, raised the second contention that the mother of both the petitioners would be entitled to a separate unit since the husband had expired at that time. It appears that as per the scheme of Section 6 of the Act when two holders of the land namely; Bhailalbhai and Zaverbhai filed the form. It does not come on record as to whether mother had filed any separate form or not and, therefore, the mother would be included in the family and as per the strength of the family as provided under Section 6(3B). If the number of the members of the family exceeds five, additional holding for each member of the family exceeding five, subject to the outer limit of not more than double the original holding is permissible. Therefore, under these circumstances the mother would be included in the family and a separate unit is only available to the major son. Therefore, the

said contention raised on behalf of the petitioner cannot be accepted. However, it deserves to be recorded that the perusal of the order passed by the Mamlatdar, which has been confirmed by the Assistant Collector and the Tribunal shows that no separate unit is being given for the mother on the ground that she was holding a separate land admeasuring 11 acres and 2 gunthas. If the mother is having a separate source of maintenance and is independently maintaining herself, the position may be otherwise, and she may not be considered in the family, however, if there is no source of maintenance and the land is inherited by the son, who is to hold the land and who has filed the declaration, the mother would be one of the persons entitled to be included in the family while considering the total strength of the number of persons of the family and consequently, the permissible limit is required to be computed.

6. The third contention raised on behalf of the petitioners by Mr.Patel is that all the three

authorities have ignored the decree passed by the Civil Court and the entrustment of the possession by the Collector to various members of the family as per the decree of the Civil Court, merely because there was no entry in the revenue record deserves consideration. It is not in dispute that the land was earlier in the possession of the District Collector from 1944 onwards. It is also not in dispute that the land is released by the Collector on 5.10.1973 and as per the decree of the Civil Court, the possession is entrusted by the Collector. It appears that the Mamlatdar did not consider the said aspects on the ground that no certificate is obtained under Section 8 of the Act for the alleged partition/division of the land made by the Collector pursuant to the decree of the Civil Court. It is not a case where the partition or division of the land has taken place by the voluntary action of the holder of the land, but it appears that the properties were in the custody of the Collector and pursuant to the decree of the Civil Court the

Collector has acted upon the same. Therefore, in cases where the division has taken place of the land in question pursuant to the decree of the Civil Court, the provisions of Section 8 of the Act may have no applicability, unless it is the case of authority or it is demonstrated that the decree was a collusive decree to frustrate the implementation of the Act or that behind the back of the authority. It deserves to be recorded that even for certifying the transaction as per the scheme of Section 8, the Collector himself is the competent authority. Further, as recorded hereinabove, the property was with the Collector and the Collector himself has acted pursuant to the decree of the Civil Court and, therefore, under these circumstances, it cannot be said that the effect of the decree of the Civil Court would be nullified either because the certificate was not obtained under Section 8 of the Act or that such decree or the division is not entered in the revenue record. Therefore, it appears that all the lower authorities from the stage of Mamlatdar until

its confirmation thereof by the higher authorities have committed error of jurisdiction in not considering the holding of Bhailalbhai or Zaverbhai, as the case may be, by giving proper effect to the decree of the Civil Court. It hardly deserves to be recorded that between the revenue record and the decree of the Civil Court, the latter is to be given not only weightage but also effect as against the revenue entry since such entries are having values only for fiscal purpose. Under these circumstances, it was required for the Mamlatdar at the first instance to consider the holding of Bhailalbhai or Zaverbhai, as the case may be, on the basis of the decree passed by the Civil Court, which has already been acted upon by the District Collector while entrusting the property to the concerned share-holder, pursuant to the decree of the Civil Court. The aforesaid aspect is also not properly considered by the Appellate Authority as well as by the Tribunal.

7. In the result, the order passed by the Mamlatdar, its confirmation thereof by the

Assistant Collector and the Tribunal are quashed and set aside with the directions to the Mamlatdar to make a computation of the holding of Zaverbhai and Bhailalbhai as per the decree of the Civil Court on the appointed day and to pass appropriate order as early as possible, preferably within a period of six months from the date of receipt of the order of this Court. It may be clarified that in the event the contingencies arise for considering the concerned mother in the family of Bhailalbhai or Zaverbhai, as the case may be, the observations made by this Court in the present judgement shall also be considered by the Mamlatdar while passing the final order. Until the fresh order is passed by the Mamlatdar, the status-quo for the title and possession of the land shall be maintained by all concerned.

8. The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

1.2.2007 **(Jayant Patel, J.)**

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